HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO.9960 of 2007

Dated:10-12-2007

Between:

Y.Satya Sri Mukharjee

..... Pe

AND

Vijayawada Municipal Corporation,
Rep by its Commissioner

And others.

..... Respo

Counsel for the petitioner : Sri SaiGangadhar Chamarthy.

Counsel for Respondent No.1 : Miss.G.Jhansi, SC
Counsel for respondents 2 to 4: Sri Rama Krishna for
Sri B.Srinivasa Rao.

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.9960 of 2007

O R D E R:

This writ petition is filed for a writ of mandamus to declare the action of respondent No.1 Corporation in laying the c.c. road and drain in the petitioner's land in survey No.302/12 of Gunnadala, Vijayawada without acquiring the land of the petitioner under the provisions of the Land Acquisition Act as arbitrary, illegal and violative of Article 300-A of the Constitution of India.

The petitioner claims to have succeeded to the above mentioned land from his father Sri Y.Koteshwar Rao on the latter's death in April 1998. He also claims that the property was mutated in the name of the petitioner in the revenue records. The Commissioner of respondent No.1 – Corporation sent letter dated 4.4.2007 stating that there is an existing passage in Devangula Hostel street on which a c.c. road was proposed to be laid and a drain was proposed to be constructed. The petitioner was therefore, requested to attend his office on 9.4.2007 at 4.00 P.M., alongwith copies of documents in proof of title over the land to discuss the issue of formation of c.c. road and drain through the private site. Apprehending that the petitioner may be dispossessed and proposed work may be carried out, the present writ petition is filed.

Respondents 2 to 4 were impleaded as per order dated 20.11.2007 of this Court in W.P.M.P.No.18314 of 2007. According to them the site does not exclusively belong to the petitioner and that the proposed work is being taken up for the benefit of the residents of the locality.

In the counter affidavit filed by the Commissioner of the 1st respondent Corporation, it is mentioned as under:

> "In reply to paragraph 8, it is submitted that the construction work of c.c. drain to Devangula Hostel road is under progress and the

Municipal Corporation never entered into the site belongs to the petitioner and executed the work in the alleged site in R.S.No.302/12. The drain is under construction at either sides leaving the petitioner's portion of land. Further the petitioner was called for negotiations for alienating the land bit of the petitioner to the Corporation, the work will be taken up in the alleged land bit of the petitioner only after the acquisition proposals are finalized. It is further submitted that no proposals are pending for laying c.c. road to the said road through the petitioner's site. As per the documentary evidence, the land covered in R.S.No.302/8P and 13P in R.S.No.302/11 was classified as 'well site' have joint rights to the residents of the nearby vicinity. The said well was used long back and now it was not in use. All the residents of the locality including the petitioners are using the place for passage. As there are common rights to the inhabitants of the area on the said site, and majority of the public are giving their consent to provide c.c. road and drain, and develop the place, the request of the people of the area is considerable. The petitioner with a malafide intention stopping the developmental activity undertaken by the respondent municipal corporation in the interest of the public."

The question whether the petitioner has exclusive right over the property or not cannot be gone into in this writ petition. However, since the Commissioner of respondent No.1 Corporation has already given a notice as mentioned above, it would be appropriate that if he examines the documents which purported to vest ownership in the petitioner. There is some controversy over whether on 9.4.2007 the petitioner appeared before respondent No.1 or not.

Without going into the same, the writ petition is disposed of with the direction to the Commissioner, Vijayawada Municipal Corporation to examine the claim of the petitioner and if he is prima facie satisfied that the petitioner has legal title over the land on which the activities are proposed to be taken up, respondent No.1 shall not proceed with the work without following due process of law. On the other hand, if the Commissioner is prima facie satisfied that the petitioner does not have title over the property in respect of R.S.No.302/12 of Gunadala, he is free to proceed with the work. However, the petitioner in such an event is entitled to approach appropriate Court of law to seek declaration of title of

his property and other appropriate remedies. The Commissioner shall complete this exercise after giving notice to the petitioner and respondents 2 and 3 within a period of four weeks from the date of receipt of a copy of this order.

_____

C.V.NAGARJUNA REDDY,J

Date:10.12.2007

Note:
Issue c.c. in one week.
B/o.
mdaa